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United States Bankruptcy Court
San Jose, California

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re] Case No. 11-56798
]
GLORIA ELENA DHEMING,] Chapter 11
]
Debtor(s).]
_____]

MEMORANDUM DECISION RE: VALUATION DATE

This matter is before the Court on Redwood Mortgage Investors VIII's ("Redwood") Objection to Debtor's Combined Plan and Disclosure Statement. The parties disagree as to the appropriate date of valuation, for plan confirmation purposes, of the real property located at 2787 California Street, San Francisco, California ("Property"). Debtor argues the valuation date for Redwood's secured claim is the petition date, while Redwood argues that it is the confirmation date.

This chapter 11 was filed on July 21, 2011, 18 months ago. Redwood holds a junior lien on the California property; Select Portfolio Servicing, Inc. holds the first deed of trust in the amount of \$1,554,128.79. On Debtor's amended Schedule A filed October 11, 2011, Debtor valued the Property at \$925,000. Appraisals conducted since filing have valued the property at \$1,387,500 (November 2011), and \$2,000,000 (February 2012).

UNITED STATES BANKRUPTCY COURT
For The Northern District Of California

1 Redwood has filed a proof of claim asserting a \$660,703.90 secured
2 claim.

4 **ANALYSIS**

5 The Bankruptcy Code does not specify the appropriate date to
6 use in valuing collateral. Section 506(a) provides:

7 An allowed claim of a creditor secured by a lien on
8 property in which the estate has an interest . . . is a
9 secured claim to the extent of the value of such creditor's
10 interest in the estate's interest in such property . . .
11 and is an unsecured claim to the extent that the value of
12 such creditor's interest . . . is less than the amount of
13 such allowed claim. Such value shall be determined in light
14 of the purpose of the valuation and of the proposed
15 disposition or use of such property, and in conjunction
16 with any hearing on such disposition or use or on a plan
17 affecting such creditor's interest.

18 § 506(a) (emphasis added).

19 In keeping with this statutory language, courts use different
20 valuation dates depending upon the purpose of the valuation. See
21 In re Briggs Transportation Co., 780 F.2d 1339, 1349 (8th Cir.

22 1985). For example, courts generally use the petition date for
23 purposes of determining adequate protection under § 361, avoiding
24 liens under § 522(f), and redemption under § 722. See In re Wood,
25 190 B.R. 788, 792-93 (Bankr. M.D. Pa. 1996) (citing cases).

26 However, the majority of courts agree that for purposes of
27 determining the amount of a secured creditor's claim in the context
28 of plan confirmation, the relevant collateral should be valued as
of the effective date of the plan. Id. (citing cases); see also
Alan N. Resnick and Henry J. Sommer, eds., 4 Collier on Bankruptcy
¶ 506.03[10]; Hon. William L. Norton, Jr. and William L. Norton
III, eds., 3 Norton Bankruptcy Law and Practice, § 52:8, page 52-13
(3d ed. 2012) ("In cases concerning confirmation of a plan, courts

1 have held that absent bad faith or excessive delay before plan
2 confirmation, value should be determined on the date of the
3 confirmation hearing or the valuation hearing.").

4 Representative cases following this approach are In re Ahlers,
5 794 F.2d 388, 398 (8th Cir. 1986), rev'd on other grounds, 485 U.S.
6 197 (1988) (for purposes of the reorganization plan, the value of
7 the collateral is to be determined at the time for confirmation of
8 that plan); In re Heritage Highgate, Inc., 679 F.3d 132, 143 (3d
9 Cir. 2012) (confirmation date was the appropriate time to value
10 collateral because the confirmed plan called for Debtors to retain
11 ownership of the property); In re Eblen, 1991 WL 284108, at *2
12 (Bankr. N.D. Cal. 1991); In re Stanley, 185 B.R. 417 (Bankr. D.
13 Conn. 1995); and In re Seip, 116 B.R. 709, 710 (Bankr. D. Neb.
14 1990).

15 In contrast, in In re Flagler-At-First Associates, Ltd., 101
16 B.R. 372 (Bankr. S.D. Fla. 1989), the court ruled that the petition
17 date was the appropriate date for valuation of a secured claim on a
18 commercial property. The bankruptcy court reasoned that § 502 and
19 § 506 should be read together. Id. at 376. Section 502 provides
20 that the court is to determine the amount of a claim as of the date
21 of the filing of the petition. Thus, according to the court, when
22 § 506 refers to "allowed claims" being "secured claims" it is
23 intended to be consistent with § 502(b), that is, an allowed
24 secured claim is to be determined as of the filing of the petition.
25 101 B.R. at 376. The court interpreted the last sentence of
26 § 506(a) as follows: "[E]ven though the value determined in a
27 Section 506 hearing takes into account a proposed disposition of
28

1 the property, the allowed secured claim is still fixed as of the
2 filing date." Id. at 377.

3 In In re Beard, 108 B.R. 322 (Bankr. N.D. Ala. 1989), the
4 bankruptcy court also concluded that the petition date was the
5 appropriate date for valuation for all purposes. Beard involved
6 the valuation of depreciating equipment. The court found that when
7 depreciating collateral is involved, the valuation at a later date
8 could effect an unlawful "taking" of property without due process.
9 Id. at 326-27. The Court opined that the last sentence of
10 § 506(a)(1) was apparently "thrown in for 'good measure' to make
11 clear that a creditor's property rights in a bankruptcy case are
12 determined for other purposes as they are for the allowance of the
13 creditor's secured claim." Id. at 326.

14 The Court does not find these latter cases to be persuasive.
15 Using § 502 as a justification for valuing all secured claims as of
16 the petition date would render the last sentence of § 506(a)(1)
17 superfluous.

18 Other courts have opted for a flexible standard that turns on
19 the equities of the case. Debtor cites In re Aubain, 296 B.R. 624
20 (Bankr. E.D.N.Y. 2003), in which the bankruptcy court used the
21 value as of the petition date to permit debtor to strip off a lien
22 in her chapter 13 case. The debtor sought to retroactively strip
23 off a junior lien that was wholly unsecured as of petition date.
24 Over the course of the plan the real property collateral had
25 increased in value. The court found the equities weighed in favor
26 of using the petition date as the date of valuation, which allowed
27 debtor to strip the junior lien.
28

1 In Wood, the Debtor had upgraded the zoning of her real
2 property during the pendency of her chapter 11 case, which resulted
3 in an approximately \$20,000 increase in value. In determining the
4 appropriate date of valuation of the real property to strip off a
5 junior lien, the court reviewed the numerous cases on the issue.
6 The court rejected the premise that § 502's reference to the
7 petition date mandated that a secured claim be valued as of the
8 petition date, given the language of § 506(a). The court concluded
9 that § 506(a) is intended to be flexible, and that an equitable
10 approach, rather than a hard and fast rule, made sense. The court
11 set out a list of factors to be considered when determining the
12 appropriate date for valuation: (1) the impact of the debtor's
13 efforts on the postpetition change in value; (2) the expectancies
14 of the parties at the time they may have made the loan agreement
15 (if any); (3) whether the application of different dates for
16 valuation purposes reach an absurd result; (4) the convenience of
17 administration; (5) the equitable concept that those who bear the
18 risk should benefit from the rise in value; (6) a resulting
19 windfall to any one party should be discouraged; (7) the bankruptcy
20 policy set forth in § 552(b) which extends prepetition liens to
21 postpetition proceeds in certain situations (8) the bankruptcy
22 policy set forth in § 362(d), which encourages the tendering of
23 adequate protection payments to a creditor holding depreciating
24 collateral; (9) the oft-stated policy of bankruptcy to secure the
25 debtor a "fresh start"; (10) the result of utilizing a specific
26 date of valuation on the bankruptcy itself including that impact
27 upon senior and junior lien creditors; and (11) whether the party
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1 benefitting from a delay in valuation has been responsible for that
2 delay. Wood, 190 B.R. at 794-95.

3 Debtor cites a number of other cases in which courts used the
4 petition date to value collateral for other purposes. The Court
5 does not find these cases to be dispositive. Some of the cases
6 involve depreciating collateral, In re Johnson, 165 B.R. 524, 528
7 (Bankr. S.D. Ga. 1994) (vehicle), which raises other
8 considerations. See Eblen, 1991 WL 284108, at *2 (a rule that
9 unilaterally fixes the value of the collateral at the time of the
10 filing of the bankruptcy only protects creditors whose collateral
11 depreciates and who have failed to take advantage of the remedies
12 available to them - relief from stay or adequate protection - but
13 leaves creditors whose collateral appreciates remediless). Others
14 involve valuation of collateral for other purposes such as to
15 determine an exemption. In re Hall, 118 B.R. 671 (Bankr. S.D. Ind.
16 1990). Finally, In re Waters, 276 B.R. 879 (Bankr. N.D. Ill. 2002);
17 In re Driscoll, 57 B.R. 322 (Bankr. W.D. Wis. 1986); and In re
18 Riley, 88 B.R. 906 (Bankr. W.D. Wis. 1987) do not directly analyze
19 the issue.

20 The Court concludes that the equitable approach set forth in
21 Aubain and Wood may be appropriate where there are unusual
22 circumstances. However, the Court agrees with the approach adopted
23 by the majority of courts that the appropriate date for valuing
24 collateral for purposes of fixing a secured creditor's claim is the
25 confirmation date, or a date close to confirmation. The plain
26 language of § 506(a) supports the conclusion that when the purpose
27 of the valuation is to determine the treatment of the creditor's
28 secured claim under a plan, and the Debtor intends to retain the

1 collateral, that the value should be set as of the date of
2 confirmation of that plan.

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9 **CONCLUSION**

10 Redwood's secured claim shall be valued as of a date that is at
11 or near the confirmation date of Debtor's proposed plan of
12 reorganization.

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14 Dated:

3/22/13


ARTHUR S. WEISSBRODT
UNITED STATES BANKRUPTCY JUDGE

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